

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

KRISTY N. SLEEPER and  
RANDALL J. SLEEPER, wife and  
husband,

Plaintiffs,

v.

RENT RECOVER, LLC.,

Defendant.

NO: 2:14-CV-0005-TOR

ORDER DENYING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT

BEFORE THE COURT is Plaintiffs' Motion for Default Judgment (ECF No. 15). This matter was submitted for consideration without oral argument. The Court has reviewed the motion and record and files herein and is fully informed.

FACTS<sup>1</sup>

This is an action concerning alleged unlawful action in connection with the collection of a debt. In November 2011, Plaintiffs Randall J. Sleeper and Kristy N.

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<sup>1</sup> These facts are excerpted from Plaintiffs' complaint and used for the purposes of the instant motion only.

1 Sleeper<sup>2</sup> entered into a lease agreement with Sterling Holdings, LLC. In March  
2 2012, Plaintiffs notified Sterling Holdings that they were terminating the lease.  
3 Sterling Holdings provided two different move-out statements indicating two  
4 different amounts owing. Plaintiffs assert in their first amended complaint that the  
5 difference between the two was an \$815.00 “early termination fee.” However, that  
6 is not apparent on the face of the two move-out statements themselves.<sup>3</sup> Sometime  
7 in June 2012, Sterling Holdings assigned to Defendant for collection \$2,058.36 due  
8 and owing from Plaintiffs.

9 Plaintiffs allege that in June 2012 one of Defendant’s collection agents  
10 contacted Randall Sleeper at work by representing to a receptionist that there was

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11 <sup>2</sup> Kristy Sleeper’s name appears on the move-out statements and Defendant’s  
12 Spokane County District Court complaint as Kristy Garrison.

13 <sup>3</sup> Accounting for identical charges shown on both statements, the differences  
14 between the statements are as follows. One statement, showing \$796.18 owing,  
15 includes fees for a March Avista bill of \$120.77, a March City of Spokane bill for  
16 \$100.63, and prorated March rent of \$266.42. The other statement, showing  
17 \$2,058.36 owing, includes fees for an entire month of rent in March at \$815.00, a  
18 February late charge of \$120.00, and an early termination fee of \$815.00. Thus the  
19 difference between the two statements is \$1,262.18 and not merely the single  
20 \$815.00 “early termination fee.”

1 an emergency for which he needed Mr. Sleeper's phone number. The agent  
2 demanded payment of the \$2,058.36 owing. Mr. Sleeper, being at work, gave the  
3 agent Mrs. Sleeper's number and hung up. The agent then allegedly contacted  
4 Mrs. Sleeper and threatened legal action against the couple unless they paid the  
5 amount owing. The Plaintiffs further allege that at one point the agent began  
6 screaming into the phone such that neighbors on an adjoining balcony could hear  
7 the conversation. Plaintiffs refused to pay the \$2,058.36.

8 Plaintiffs further allege that in September 2012, one of Defendant's  
9 employees contacted Sterling Holdings and requested that the move-out statements  
10 be amended to include an additional \$1,630.00 "insufficient notice to vacate" fee.  
11 In October 2012, Defendant filed a complaint against Plaintiffs in the Spokane  
12 County District Court seeking \$3,410.36.

13 Plaintiffs filed this action in the U.S. District Court for the Eastern District  
14 of Washington on January 6, 2014, alleging violation of (1) the Fair Debt  
15 Collection Practices Act,<sup>4</sup> (2) the Washington Collection Agency Act,<sup>5</sup> and (3) the  
16 Washington Consumer Protection Act. On May 5, 2014, Plaintiffs voluntarily  
17 dismissed all other Defendants, leaving Rent Recovery, LLC, an Illinois company,  
18 as the sole defendant in the action.

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19 <sup>4</sup> 15 U.S.C. § 1692, et seq.

20 <sup>5</sup> RCW 19.16.100, et seq.

1 The Clerk of Court has entered an order of default for Defendant. Despite  
2 being properly served, as of the date of this Order, the Defendant has not filed an  
3 answer or moved to set aside its default. Plaintiff now moves for default judgment  
4 seeking statutory relief under the Fair Debt Collection Practices Act.

#### 5 DISCUSSION

6 Motions for entry of default are governed by Federal Rule of Civil  
7 Procedure 55(b). Rule 55(b)(1) provides that the Clerk of Court may enter default  
8 judgment when the plaintiff's claim "is for a sum certain or a sum that can be made  
9 certain by computation." Fed. R. Civ. P. 55(b)(1). When the value of the claim  
10 cannot be readily determined, or when the claim is for non-monetary relief, the  
11 plaintiff must move the court for entry of default judgment. Fed. R. Civ. P.  
12 55(b)(2). In such circumstances, the court has broad discretion to marshal any  
13 evidence necessary in order to calculate an appropriate award. *See* Fed. R. Civ. P.  
14 55(b)(2)(A)-(D). At the default judgment stage, well-pleaded factual allegations  
15 are considered admitted and are sufficient to establish a defendant's liability, but  
16 allegations regarding the amount of damages must be proven. *Geldes v. United*  
17 *Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977); *Microsoft Corp. v. Lopez*, 2009 WL  
18 959219 (W.D. Wash. April 7, 2009). The court must ensure that the amount of  
19 damages is reasonable and demonstrated by the evidence. *See* Fed. R. Civ. P.

1 55(b); *Getty Images (US), Inc. v. Virtual Clinics*, 2014 WL 358412 (W.D. Wash.  
2 2014).

3 The entry of default judgment under Rule 55(b) is “an extreme measure.”  
4 *Cmy. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002). “As a general  
5 rule, default judgments are disfavored; cases should be decided upon their merits  
6 whenever reasonably possible.” *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d  
7 1183, 1189 (9th Cir. 2009). In determining whether to enter default judgment, a  
8 court should consider the following factors: “(1) the possibility of prejudice to the  
9 plaintiff; (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of  
10 the complaint; (4) the sum of money at stake in the action; (5) the possibility of a  
11 dispute concerning material facts; (6) whether the default was due to excusable  
12 neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure  
13 favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th  
14 Cir. 1986); *see also United States v. VanDenburgh*, 249 F.App’x 664, 665 (9th Cir.  
15 2007). The Court considers each of the factors in turn.

16 1. Possibility of Prejudice to the Plaintiffs

17 Despite having been properly served, Defendant has failed to plead or  
18 otherwise defend. As a result, Plaintiffs’ claims against them cannot move forward  
19 on the merits, and Plaintiffs’ ability to obtain effective relief has been prejudiced.  
20 This factor weighs in favor of entering default judgment.

1       2. Merits of Plaintiffs' Substantive Claims

2           Plaintiffs have only sought relief under the federal Fair Debt Collection  
3 Practices Act (FDCPA). As such, the Court considers Plaintiffs to have abandoned  
4 their state law claims. *See Vaile v. Nat'l Credit Works, Inc.*, 2012 WL 176314, at  
5 \*2 (D. Ariz. Jan. 23, 2012). Plaintiffs allege a number of grounds on which they  
6 claim Defendant violated the FDCPA.

7           First, Plaintiffs allege Defendant falsely represented the amount, character or  
8 legal status of the debt. *See* 15 U.S.C. § 1692e(2)(A). This claim appears to stem  
9 from the inclusion of an \$815 early termination fee on one of the move-out  
10 statements and from the alleged inclusion of a \$1,630.00 insufficient notice to  
11 vacate fee to the total amount sought in state court. While the Court will take these  
12 allegations as true for the purpose of establishing Defendant's liability, in  
13 determining the amount of damages, the Court may request substantiation of these  
14 allegations. *See Geddes*, 559 F.2d at 560. The \$815 fee is shown on one of the  
15 move-out statements, but a copy of the lease has not been produced to indicate that  
16 such a penalty was not, in fact, included in that contract. Likewise, there is no  
17 evidence to substantiate the inclusion of the \$1,630.00 insufficient notice fee. The  
18 only document provided to the Court other than the move-out statements was a  
19 copy of Defendant's complaint filed in the Spokane County District Court. While  
20 that complaint seeks damages from the Plaintiffs in the sum of \$3,410.36, it does

1 not indicate how Defendant calculated that total.<sup>6</sup> In sum, while this Court will  
2 take as true the allegations that the nature of these sums was falsely represented by  
3 Defendant for purposes of liability, the Court continues to have questions  
4 regarding these amounts as would relate to the Court's exercise of its discretion in  
5 awarding statutory damages.<sup>7</sup>

6 Second, Plaintiffs allege Defendant threatened to take or took action which  
7 Defendant was not lawfully entitled to take. *See* 15 U.S.C. § 1692e(5). There is  
8 no indication or argument presented by Plaintiffs that Defendant was not legally  
9 entitled to file suit in the Spokane District Court as an assignee of the debt  
10 Plaintiffs owed to Sterling Holdings, LLC.

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12 <sup>6</sup> It cannot simply be the original debt Defendant attempted to collect, \$2,058.36,  
13 plus the alleged insufficient notice fee of \$1,630, as that total would equal  
14 \$3,688.36.

15 <sup>7</sup> The foregoing also applies to Plaintiffs' allegation that Defendant attempted to  
16 collect an amount not expressly authorized by the agreement creating the alleged  
17 debt or as permitted by law. *See* 15 U.S.C. § 1692f. The Court will take as true  
18 the allegation that these amounts were not authorized by the lease or otherwise  
19 permitted by law for purposes of liability, but will require substantiation of the  
20 amounts for purposes of awarding statutory damages.

1 Third, Plaintiffs allege that Defendant used false representations or  
2 deceptive means to attempt to collect the debt. *See* 15 U.S.C. § 1692e(10). This  
3 allegation appears to be based upon the representation by one of Defendant's  
4 agents to a receptionist at Mr. Sleeper's employment that there was an emergency  
5 necessitating that the agent be put in contact with Mr. Sleeper. Taken as true, this  
6 would lend merit to the claim. For these reasons, the merits of Plaintiffs' claims  
7 weigh both for and against ordering default judgment.

### 8 3. Sufficiency of the Complaint

9 The Court finds that the first amended complaint states at least one claim  
10 upon which relief may be granted in that it is grounded in a cognizable legal theory  
11 and alleges sufficient facts to support that theory. This factor weighs in favor of  
12 entering default judgment.

### 13 4. Sum of Money at Stake

14 Plaintiffs do not request actual damages in this case. Instead, Plaintiffs  
15 request the highest amount of statutory damages available under the FDCPA for  
16 actions brought by individuals: not exceeding \$1,000 per individual or \$2,000  
17 total in this instance. 15 U.S.C. § 1692k(a)(2)(A). In assessing statutory damages  
18 under §1692k(a)(2)(A), the Court must consider "the frequency and persistence of  
19 noncompliance by the debt collector, the nature of such noncompliance, and the  
20 extent to which such noncompliance was intentional," "among other relevant



1 factors.” 15 U.S.C. § 1692(b)(1). Other than the bare allegations made as regards  
2 to the \$815 and \$1,630 “fees,” discussed *supra*, Plaintiffs have provided none of  
3 the information statutorily required for the Court to properly assess the amount of  
4 statutory damages appropriate in this case. This factor weighs against entering  
5 default judgment at this time.

6 5. Possibility of Dispute as to Material Facts

7 Given that Defendants have not answered the complaint or otherwise  
8 participated in this case, there remains a possibility that material facts are disputed.  
9 This is especially true given the FDCPA’s affirmative defense wherein Defendant  
10 can avoid liability by showing that any violation “was not intentional and resulted  
11 from a bona fide error notwithstanding the maintenance of procedures reasonably  
12 adapted to avoid any such error.” 15 U.S.C. § 1692k(c). This factor weighs against  
13 entering default judgment.

14 6. Whether Default is Attributable to Excusable Neglect

15 The Court has no means of determining whether excusable neglect  
16 contributed to the default of the Defendant. Given that the Defendant was properly  
17 served upon its registered agent in Illinois, the Court will presume that excusable  
18 neglect did not play a role. This factor weighs in favor of entering default  
19 judgment.

1       7. Policy Favoring Decisions on the Merits

2           Public policy clearly favors resolution of cases on their merits. *Eitel*, 782  
3 F.2d at 1472; *Westchester Fire*, 585 F.3d at 1189. Nevertheless, this policy must  
4 eventually yield to the proper administration of justice. Where, as here, a party  
5 fails to defend on the merits of a claim, entry of default judgment is generally an  
6 appropriate remedy.

7           However, in this case, where Plaintiff has requested the maximum amount of  
8 statutory damages and has not provided the information this Court needs to  
9 properly exercise its discretion in determining the appropriate amount to be  
10 granted, the Court elects to exercise its power to “conduct hearings” to “determine  
11 the amount of damages” and “establish the truth of any allegation by evidence.”  
12 Fed. R. Civ. P. 55(b)(2). Accordingly, the Court directs Plaintiffs to brief and  
13 provide evidence supporting its substantive claims and amount of damages against  
14 Defendant. Upon a showing substantiating Plaintiffs’ claims and upon evidence  
15 presented relating to the § 1692k(b)(1) considerations for statutory damages, the  
16 Court will reconsider Plaintiff’s motion for default judgment.

17           **ACCORDINGLY, IT IS HEREBY ORDERED:**

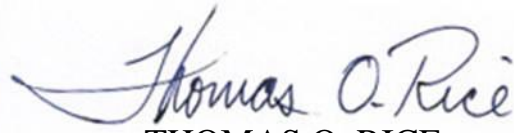
18           Plaintiffs’ Motion for Default Judgment (ECF No. 15) is **DENIED with**  
19 **leave to renew**. Plaintiff is directed to submit memorandum and evidence in  
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1 support of its claims against Defendant and in support of its request for statutory  
2 damages on or before **October 8, 2014**.

3 The District Court Executive is hereby directed to enter this Order and  
4 furnish copies to counsel.

5 **DATED** September 10, 2014.



  
THOMAS O. RICE  
United States District Judge